



Appeal Decision

Site visit made on 14 October 2019

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th November 2019.

Appeal Ref: APP/Q1153/W/19/3231909

The Old Milking Parlour, Hr Wilminstone Farm, Tavistock, Devon PL19 0JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms I Chambers against the decision of West Devon Borough Council.
 - The application Ref 3267/18/FUL, dated 26 September 2018, was refused by notice dated 18 April 2019.
 - The development proposed is the change of use of barn approved for domestic ancillary use to dwelling.
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Decision

1. The appeal is dismissed.

Preliminary matters and main issues

2. The Council refused planning permission for one single reason relating to the quality of the design. However, the Council's appeal statement refers to two recent appeal decisions¹ where Inspectors have found sites to be isolated for the purposes of policy TTV26 of the Plymouth and South West Devon Joint Local Plan 2014-2034 ("LP") which seeks to protect the special characteristics and role of the countryside by limiting development. In the context of these decisions, the Council now considers the site to be isolated for planning purposes in relation to Policy TTV26 and in conflict with this policy. The appellant has had the opportunity to comment on this and so will not suffer injustice if I were to consider it as a main issue.
3. The Council's evidence also refers to potential adverse effects on the Tamar European Marine Site, comprising the Plymouth Sound and Estuaries SAC and Tamar Estuaries Complex SPA, (the "European Sites"). I have sought further information about the potential effects on these sites and methods of mitigation and I have had regard to the responses received.
4. Accordingly, I consider the main issues to be whether the site is an appropriate location for the development, with particular regard to local and national planning policy; the effect on the living conditions of future occupiers of the site; and the effect on the integrity of the European Sites.

¹ APP/K1128/W/19/3227246 and APP/K1128/W/19/3223954

Reasons

Location

5. The site is in a rural area, surrounded by a number of existing buildings including some dwellings. Whilst only a short distance from a major road, it is accessed via a network of narrow lanes and does not appear to be within an attractive distance to facilitate walking or cycling to local services and facilities.
6. LP Policy TTV26 seeks to limit development in the open countryside. In particular it seeks to avoid isolated development other than in exceptional circumstances such as those listed in the first part of the Policy. As explained in the planning officer's report, the Council initially found that the site was not isolated and so was an appropriate location for the development.
7. Even if I were to agree with the Council that it should now be considered isolated, one of the examples of exceptional development outlined in Policy TTV26 is where development would secure the re-use of redundant or disused buildings and brownfield sites for an appropriate use. There is no robust evidence that the proposal would not meet this criterion.
8. The National Planning Policy Framework ("the Framework") at paragraph 79 indicates that the conversion of isolated buildings is permissible where their immediate setting would be enhanced. Whilst there may not be a clear enhancement in this case, any tension with this small element of the Framework would not outweigh compliance with Policy TTV26, given the overall aims of that Policy to protect the special characteristics and role of the countryside.
9. Policy TTV26 goes on to indicate that, where appropriate, development proposals should meet certain aims. These include re-using traditional buildings that are structurally sound enough for renovation without significant enhancement or alteration. Whether or not the building is considered to be traditional, the policy indicates that these criteria only apply 'where appropriate'. As such, they would not preclude the conversion of other buildings where they met the criteria in the first section of the policy setting out the types of permissible development.
10. I, therefore, find no conflict with LP Policy TTV26 and that the site is an appropriate location for the development.

Living conditions

11. The proposal relates to only part of an existing building with the remainder being in other uses. Such would prevent the installation of windows on two of the four sides. Indeed, windows have only been proposed on one of the sides. Whilst this arrangement limits the outlook to one direction and this is partly restricted by the rising topography, it is nevertheless towards undeveloped, open land.
12. The orientation of the proposed windows is such that they would only be subject to direct sunlight after the sun had passed its apex and was descending, reducing solar gain. However, there is no particular evidence that general daylight availability to the internal spaces would be poor, especially given the proposed rooflight over the deepest internal space.

13. The downstairs bathrooms and utility room would not have external windows, but these are not rooms that would be occupied for substantial periods and so would not represent an inefficient use of the darker parts of the building. There is no particular evidence that the design would significantly increase the energy consumption of the building compared to other new dwellings such that a conflict would arise with LP Policies SPT1 and DEV32 that seek to reduce the energy demand of development.
14. The proposed garden area would be set slightly to the side of the dwelling, but it would be directly linked to it via the proposed parking area. I saw at my site visit that this distance was not large, and there is no compelling evidence as to how the slight off-set nature would generate harmful living conditions.
15. Whilst the residential part of the building and proposed garden area would be close to other surrounding uses, the planning history and Council's evidence refers to storage uses. I note reference by local residents to motor trade activities, but it is not clear what they are. There is no substantive evidence regarding the uses of the adjoining buildings or that they would be anything other than benign. I find, therefore, that these relationships would not cause harmful living conditions.
16. With regard to the above, I find that the proposal would be of a suitable design quality so as to provide adequate living conditions to future occupiers of the site. Accordingly, there would be no conflict with those aims of LP Policies DEV1, DEV10, DEV20 or that seek to provide high quality housing and built environment, with appropriate living conditions.
17. The Council's officer report discussed the inclusion of a dormer window. It is not clear from the report or reason for refusal whether the Council finds the domesticating effect of this element objectionable in itself. However, whilst it may not reflect the existing appearance of the building, I find that in the context of the adjoining converted barn, which includes a projecting flat roof front porch with lantern light, it would not be incompatible with the surrounding environment. Nothing in the evidence nor my own site observations suggests that this element would be particularly intrusive or harmful to the overall character and appearance of the area. I, therefore, find no conflict with those elements of Policy DEV20 that seek to ensure that development makes a positive contribution to the townscape or landscape.

European Sites

18. Occupation of an additional dwelling at the appeal site could open pathways to additional recreational pressures on the European Sites and a consequential likely adverse impact on the integrity of those sites. Therefore, Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) is required. This I have undertaken on a proportionate basis with regard to the evidence submitted by the Council.
19. The qualifying features of the Plymouth Sound and Estuaries SAC include sandbanks which are slightly covered by sea water all the time, estuaries, mudflats and sandflats not covered by seawater at low tide, large shallow inlets and bays, reefs, Atlantic salt meadows, Shore dock; and Allis shad. Those of the Tamar Estuaries Complex SPA are internationally important populations of Avocet and Little Egret.

20. There is no dispute that both sites are at risk of deterioration through, amongst other things, increased pressure from human recreational activities. The proposed development, in combination with other development within the zone of influence of the European sites could contribute to such pressure and, therefore, mitigation is required to ensure that such pressure is avoided or limited to such a degree that would preserve the integrity of the sites.
21. The Council has proposed to secure mitigation via a planning condition, which the appellant suggests may be appropriate if negatively worded. However, such an approach would defer consideration of mitigation until after a decision had been made. As competent authority I must be certain that likely significant effects would be avoided before making a decision to grant planning permission. Without full details of the mitigation, I cannot discharge this responsibility.
22. Moreover, the evidence further suggests that mitigation may be secured by the appellant entering into a planning obligation to make a financial contribution towards a strategic mitigation solution. Without any other robust method of mitigation before me, therefore, a condition to secure mitigation would appear to be tantamount to securing a planning obligation by condition.
23. I note that the Planning Practice Guidance² (PPG) indicates that it may be possible to use a negatively worded condition to secure the entering into of a planning obligation requiring the payment of a financial contribution towards the provision of supporting infrastructure. However, elsewhere³ the PPG advises that to deliver sufficient certainty for all parties about what is being agreed, such is unlikely to be appropriate in the majority of cases.
24. The PPG⁴ goes on to say that a condition securing an obligation may be appropriate in exceptional circumstances, such as where there is clear evidence that the delivery of the development would otherwise be at serious risk, as may apply in the case of particularly complex development schemes. The appeal proposal is not a complex scheme and there is no evidence that it would otherwise be at serious risk. I note that such concerns were shared by another Inspector at a site in Crapstone⁵, which the appellant has referred me to.
25. Given my responsibilities under the Habitats Regulations, and taking a precautionary approach, I find that leaving agreement over a mitigation strategy until after permission has been granted, does not give me sufficient certainty that suitable mitigation can be delivered. Therefore, following Appropriate Assessment, I find that in the absence of a suitable mitigation strategy, significant adverse effects on the integrity of the European Sites is likely. Such indicates that planning permission should be refused.

² Paragraph Reference ID: 21a-005-20190723

³ Paragraph Reference ID: 21a-010-20190723

⁴ Ibid.

⁵ Appeal Ref: APP/Q1153/W/19/3228301

Conclusion

26. I have found no harm would arise in respect of the first two main issues. However, as set out in Paragraph 175 of the Framework, my findings in respect of the European Sites is decisive.

27. Accordingly, the appeal is dismissed.

M Bale

INSPECTOR